



Billing Code: 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2011-0552; FRL-9780-9]

Approval and Promulgation of Implementation Plans; Arizona;

Motor Vehicle Inspection and Maintenance Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve three revisions to the Arizona State Implementation Plan submitted by the Arizona Department of Environmental Quality. Two of these revisions relate to an amendment to Arizona's vehicle emissions inspection program that exempts motorcycles in the Phoenix metropolitan area from emissions testing requirements. The third revision expands the geographic area in which various air quality control measures, including the vehicle emissions inspection program but also including other control measures, apply in the Phoenix metropolitan area. EPA is approving these SIP revisions based on our conclusion that the SIP revisions meet all applicable requirements and would not interfere with reasonable further progress or attainment of any of the national ambient air quality standards. EPA is finalizing this action under the Clean Air Act obligation to take action on State submittals of revisions to state implementation plans.

EFFECTIVE DATE: This rule is effective on [Insert date 30 days from date of publication].

ADDRESSES: EPA has established docket number EPA-R09-OAR-2011-0552 for this action. Generally, documents in the docket for this action are available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at www.regulations.gov, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be publicly available in either location (e.g., Confidential Business Information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Jeffrey Buss, Office of Air Planning, U.S. Environmental Protection Agency, Region 9, (415) 947-4152, e-mail: buss.jeffrey@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms "we," "us," and "our" refer to EPA.

Table of Contents

- I. Proposed Action
- II. Response to Comments
- III. EPA's Final Action

IV. Statutory and Executive Order Reviews

I. Proposed Action

On November 5, 2012 (77 FR 66422), EPA proposed to approve revisions to the Arizona state implementation plan (SIP) submitted by the Arizona Department of Environmental Quality (ADEQ) that would exempt motorcycles in the Phoenix metropolitan area from testing under the Arizona motor vehicle emissions inspections and maintenance ("VEI") program and that would expand the geographic area in which certain air pollution control programs apply within the Phoenix metropolitan area. We proposed these actions under section 110(k) of the Clean Air Act (CAA or "Act"). (The State of Arizona developed the VEI program to reduce emissions of carbon monoxide (CO), volatile organic compounds (VOC) and oxides of nitrogen (NO_x) from in-use motor vehicles in the Phoenix and Tucson areas.¹)

Specifically, we proposed to approve the submittal on November 6, 2009 of "Final Arizona State Implementation Plan Revision, Exemption of Motorcycles from Vehicle Emissions Inspections and Maintenance Program Requirements in Area A" (October 2009) ("2009 VEI SIP Revision") and the submittal on January 11, 2011 of "Final Addendum to the Arizona State Implementation Plan Revision, Exemption of Motorcycles from

¹ VOC and NO_x are precursors to ozone formation in the atmosphere under the influence of sunlight and meteorology.

Vehicle Emissions Inspections and Maintenance Program Requirements in Area A, October 2009" (December 2010) ("2011 VEI SIP Addendum").

As described in our November 5, 2012 proposed rule, the 2009 VEI SIP Revision submittal includes a non-regulatory portion that provides analyses of emission impacts due to the motorcycle exemption, a demonstration that the exemption would not interfere with attainment or maintenance of the national ambient air quality standards (NAAQS or "standards"), and a contingency measure establishing a binding commitment on ADEQ to request Legislative action to reinstate emissions testing for motorcycles in the Phoenix area should the Phoenix area experience a violation of the carbon monoxide NAAQS. The 2009 VEI SIP Revision also includes a regulatory portion comprised by House Bill (HB) 2280, enacted by Arizona in 2008 to take effect upon EPA approval. HB 2280 amends the Arizona Revised Statutes (ARS) section 49-542 ("Emissions inspection program; powers and duties of director; administration; periodic inspection; minimum standards and rules; exceptions; definition") by exempting motorcycles in Area A (i.e., the Phoenix area) from emissions testing under the VEI program.^{2,3} The 2011 VEI SIP Revision

² The changes to ARS Section 49-542 are self-implementing, which means that they become effective upon EPA approval as a revision to the Arizona SIP. See page 4 of the 2009 VEI SIP Revision.

includes additional information regarding the impacts of the motorcycle exemption on attainment of the 2008 8-hour ozone NAAQS and the 1987 PM₁₀ NAAQS and includes a substitute measure to offset the VOC emission reductions foregone by the exemption of motorcycles from the VEI emissions testing requirement.

With respect to the SIP revision that would expand the geographic area in which certain air pollution control programs apply within the Phoenix metropolitan area, we noted in our November 5, 2012 proposed rule that the relevant amended statutory definition of "Area A" was included in ADEQ's May 25, 2012 submittal of the *MAG 2012 Five Percent Plan for PM-10 for the Maricopa County Nonattainment Area (May 2012)* ("2012 Phoenix Area PM-10 Five Percent Plan"). Specifically, ADEQ included ARS 49-541(1) ("Definitions") as amended by the Arizona Legislature in 2001 as part of the submittal of the 2012 Phoenix Area PM-10 Five Percent Plan. ARS 49-541(1) establishes the boundaries of Area A.⁴

³ On January 28, 2013, at EPA's request, ADEQ supplemented appendix A of the 2009 VEI SIP Revision with a certified copy of the codified version of ARS section 49-542, along with two House Bills that extended the conditional enactment date set for July 2010 in House Bill 2280 to July 2012, and then to July 2014. We are taking final action to approve this certified copy of ARS 49-542 in today's action.

⁴ ADEQ included ARS 49-541(1) in exhibit 1 in Appendix C to the 2012 Phoenix Area PM-10 Five Percent Plan. With respect to ADEQ's May 25, 2012 SIP revision submittal of the 2012 Phoenix Area PM-10 Five Percent Plan, EPA is taking action today only on the amended statutory provision that expands the boundaries of Area A [i.e., amended ARS 49-541(1)]. EPA will take action on the rest of the 2012 Phoenix Area PM-10 Five Percent Plan in one or more future rulemakings.

As explained in our proposed rule, Area A, as last approved in 2003 (68 FR 2912 (January 22, 2003)), includes all of the metropolitan Phoenix carbon monoxide and 1-hour ozone nonattainment areas plus additional areas in Maricopa County to the north, east, and west, as well as a small portion of Yavapai County and the western portions of Pinal County. "Area A" is also used by the State of Arizona to identify the applicable area for implementation of a number of air pollution control measures, including but not limited to the VEI, cleaner burning gasoline (CBG), and "stage II" vapor recovery programs. The amended "Area A" definition, included with the 2012 Phoenix Area PM-10 Five Percent Plan, extends Area A beyond the boundaries approved by EPA in 2003 to add portions of Maricopa County west of Goodyear and Peoria and a small piece of land on the north side of Lake Pleasant in Yavapai County.

As discussed in more detail on pages 66424-66428 of the November 5, 2012 proposed rule, we proposed to approve the exemption for Phoenix-area motorcycles from the emissions testing requirements under the VEI program because:

- With respect to all three SIP revisions, ADEQ has met the procedural (i.e. public process) requirements for SIP revisions under CAA section 110(l) and 40 CFR part 51, subpart F;

- With the emissions testing exemption for motorcycles in the Phoenix metropolitan area, the Arizona VEI would continue to meet Federal minimum requirements for vehicle inspection and maintenance (I/M) programs;
- The VEI program, as amended to exempt motorcycles from the emissions testing requirement, would continue to meet or exceed the alternate low enhanced I/M performance standard in the Phoenix area as required under 40 CFR 51.351 and 51.905(a)(1);
- The motorcycle exemption would not interfere with attainment or maintenance of any of the NAAQS and would thereby comply with section 110(1) of the CAA because the potential incremental increase in emissions of CO, VOC and PM-10 due to foregone motorcycle emissions testing and maintenance would be more than offset by the emissions impact of expanding the boundaries of "Area A"⁵ because "Area A" defines the area of applicability for various air pollution control measures, such as the VEI program, the CBG program, the "stage II" vapor recovery program, and various PM-10 control measures, and expanding the boundaries of "Area A" thus extends these programs to areas

⁵ For example, the proposed rule, at page 66427, compares the estimated 1.3 metric tons per day of VOC emissions reductions from expansion of Area A boundaries with the estimated 0.1 metric ton per day of VOC emissions increases from foregone emissions testing under the VEI program for Phoenix area motorcycles.

not otherwise covered for the purposes of the Arizona SIP;
and

- The 2009 VEI SIP Revision includes a commitment by ADEQ, i.e., to request Legislative action to reinstate emissions testing for motorcycles in the Phoenix area should the area experience a violation of the CO standards, that we find complies with the contingency measure requirements under section 175A(d) of the CAA with respect to the Phoenix area, which is a "maintenance" area for the CO standard.

For background information about the EPA's regulations governing motor vehicle inspection and maintenance programs (I/M), the development and evolution of Arizona's VEI program, EPA's actions in connection with that program, as well as additional information concerning the State's public process for adopting these SIP revisions, and our rationale for proposing approval of the three subject SIP revisions, please see our November 5, 2012 proposed rule.

II. Response to Comments

Our November 5, 2012 proposed rule provided a 30-day public comment period. We received comments from 15 commenters on our proposed rule during the public comment period. All of the commenters except for two expressed their support for EPA's proposed action. In the following paragraphs, we summarize the

comments objecting to our proposed action and provide our responses.

Comment #1: The commenter agrees with the proposal to exempt motorcycles from emissions testing, but objects to the expansion of Area A because it expands the use of special gasoline blends (summer and winter) that the commenter believes do nothing for the environment and contribute to fuel shortages and excessive retail fuel costs. The commenter also suggests that the emissions testing exemption for newer model year vehicles be increased from 5 to 10 years based on engine technology improvements.

Response #1: First of all, EPA disagrees with the contention that the special gasoline blends in effect in the Phoenix metropolitan area, and referred to as the "cleaner burning gasoline" (CBG) program, do nothing for the environment. To the contrary, EPA has approved a number of Phoenix area air quality plans that rely on the continuation of the CBG program to attain and maintain the NAAQS. For instance, in the *Carbon Monoxide Redesignation Request and Maintenance Plan for the Maricopa County Nonattainment Area* (May 2003), which was approved by EPA at 70 FR 11553 (March 9, 2005), the Maricopa Association of Governments (MAG) credits CBG with providing over 20% of the CO emissions reductions relied upon to demonstrate maintenance of the CO standard through the first ten years beyond

redesignation.⁶ More recently, in the *Eight-Hour Ozone Plan for the Maricopa Nonattainment Area* (June 2007), approved by EPA at 77 FR 35285 (June 13, 2012), MAG credits CBG with providing 3.5% of the NO_x reductions that the plan relies upon to demonstrate attainment of the 1997 8-hour ozone standard in the Phoenix-Mesa area.⁷

Second, we note that the commenter does not challenge EPA's conclusion that the expansion of Area A meets all applicable CAA requirements but rather contends that the extension of CBG to a larger area would increase retail fuel costs and lead to fuel shortages. However, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the minimum criteria set in the Clean Air Act or any applicable EPA regulations. Thus, considerations such as whether a State rule may be economically or technologically challenging cannot form the basis for EPA disapproval of a rule submitted by a state as part of a SIP [see *Union Electric Company v. EPA*; 427 U.S. 246, 265 (1976)]. Also, EPA disapproval of ADEQ's submittal of the statutory provision expanding Area A would not prevent the implementation of CBG in the larger area because the expanded definition of Area A and related CBG requirements would still

⁶ See page ES-7 of MAG's *Carbon Monoxide Redesignation Request and Maintenance Plan for the Maricopa County Nonattainment Area* (May 2003).

⁷ See page ES-5 of MAG's *Eight-Hour Ozone Plan for the Maricopa Nonattainment Area* (June 2007).

apply in the larger area, and would still be enforceable, under State law, regardless of EPA's action to approve or disapprove the amended definition as a revision to the Arizona SIP.

Lastly, with respect to the suggestion that the emissions testing exemption for newer model year vehicles should be increased from 5 to 10 years, any changes to the exemption for motor vehicle emissions testing would first require a change in Arizona law. Thus, the commenter should direct this suggestion to State officials in the first instance. If such a statutory change were to be adopted, ADEQ would need to adopt and submit the change as a revision to the Arizona SIP, including documentation showing that the revision meets all relevant CAA and EPA requirements - including a demonstration that the change would not interfere with reasonable further progress or attainment of the NAAQS under section 110(1) of the Act. Upon receipt of a complete SIP revision, EPA would then consider approval or disapproval in the context of notice-and-comment rulemaking.

Comment #2: The commenter objects to EPA's proposed approval of the exemption for motorcycles because motorcycle-related emissions contribute to the overall problem of poor air quality in the Phoenix metropolitan area and should not be ignored even though it may be small in comparison to the emissions generated by cars.

Response #2: In support of the contention that motorcycle emissions do contribute to overall air quality problems in the Phoenix metropolitan area, the commenter presents an estimate of total emissions from motorcycles in the Phoenix area that, as corrected for a computational error and adjusted for unit conversions, are not inconsistent with the corresponding estimates of motorcycle emissions prepared by MAG in the *Eight-Hour Ozone Redesignation Request and Maintenance Plan for the Maricopa Nonattainment Area* (February 2009).⁸ However, we did not propose to approve the VEI exemption for motorcycles based on the relatively low contribution of motorcycle emissions to overall pollutant emissions in the Phoenix metropolitan area. Rather, we based our proposed approval on our conclusion that the VEI program, as amended to include the motorcycle exemption, would continue to meet Federal I/M requirements and that any increase in emissions due to the exemption would be offset by the reduction in emissions due to the extension of various

⁸ In *Eight-Hour Ozone Redesignation Request and Maintenance Plan for the Maricopa Nonattainment Area* (February 2009) (see page 109 of the Appendix A, Exhibit 1 ("2005 Ozone Periodic Emission Inventory")), MAG estimates that motorcycles in year 2005 emitted approximately 660 tons per year (tpy), 200 tpy, and 2,620 tpy of VOC, NO_x, and CO, respectively, within the Phoenix-Mesa 8-hour ozone nonattainment area. The corresponding estimates prepared by the commenter, as corrected for an error in computation (i.e., the commenter's calculated estimate of CO per bike should have been 33,817 grams (per year) instead of 3,137 grams (per year) based on 7 grams per kilogram and 4,831 kilometers driven per year per bike) and converted to tons per year, are approximately 360 tpy for VOC (and for VOC+NO_x) and 2,720 tpy for CO.

control measures to a larger geographic area by virtue of the amended statutory definition of "Area A."

More specifically, in connection with the emissions impact analysis submitted by ADEQ, we agreed with its focus on the incremental change due to foregone emissions testing and maintenance of motorcycles under the VEI program rather than on total motorcycle-related emissions. Next, we found ADEQ's emissions estimates for the incremental increase to be reasonable. Converted to tons per year, ADEQ's estimates for the incremental increase amounts to approximately 20 tpy for VOC and 100 tpy for CO (see the column labeled "I/M benefit from motorcycle testing and repair" in table 2 of EPA's November 5, 2012 proposed rule). As to this incremental increase in VOC and CO emissions, we concluded that the incremental increase in emissions due to foregone emissions testing and maintenance would not interfere with attainment or maintenance of any of the NAAQS given the emissions benefits associated with the expansion of Area A and the related extension of various air quality control measures to the larger area, including the VEI program, the CBG program, the vapor recovery program, and various PM-10 control measures, given that the geographic applicability for all of these programs is defined by "Area A." See page 66426-66428 of EPA's November 5, 2012 proposed rule.

III. EPA's Final Action

Under section 110(k) of the CAA, and for the reasons set forth in our November 5, 2012 proposed rule and summarized herein, EPA is taking final action to approve the revisions to the Arizona SIP submitted by ADEQ on November 6, 2009 and January 11, 2011 concerning the exemption of motorcycles from the emissions testing requirements under the Arizona VEI program in the Phoenix area, because we find that the revisions meet all applicable requirements, and together with the expansion of the geographic area to which the VEI and other air pollution control measures apply, would not interfere with reasonable further progress or attainment of any of the national ambient air quality standards. In connection with our approval of the State's exemption of motorcycles from the VEI emissions testing requirements, we are approving an amended statute, Arizona Revised Statutes (ARS) section 49-542, that codifies this exemption in State law.⁹

EPA is also approving the revised statutory provision [amended Arizona Revised Statutes (ARS) section 49-541(1)], submitted by ADEQ on May 25, 2012,¹⁰ that expands the boundaries

⁹ Final approval of the current version of ARS 49-542 exempting motorcycles from VEI emissions testing requirements supersedes the previous versions of ARS 49-542 approved by EPA and made a part of the applicable Arizona SIP. The most recent prior approval by EPA of ARS 49-542 was published at 72 FR 15046 (March 30, 2007).

¹⁰ Final approval of the amendment to ARS 49-541(1) expanding the boundaries of "Area A" to those promulgated by the Arizona Legislature in 2001 supersedes the previous versions of ARS 49-541(1) approved by EPA and made a part of the applicable Arizona SIP. The most recent prior approvals by EPA of

of Area A, i.e., the area in which the various air pollution control measures (including the VEI, and cleaner burning gasoline and stage II vapor recovery programs) in the Phoenix area apply.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

the definition of "Area A" in ARS 49-541(1) were published at 68 FR 2912 (January 22, 2003) and 69 FR 10161 (March 4, 2004). The definition of the boundaries of "Area A" in ARS 49-541(1) was the same in both the 2003 and 2004 final approval actions and reflect the boundaries promulgated by the Arizona Legislature in 1999. Approval of the amended statutory definition of "Area A" in today's final action expands the geographic applicability of the VEI program, the CBG program, the Stage II vapor recovery program and any other Arizona SIP control measure that relies on the definition of "Area A" in ARS 49-541(1) under the Arizona SIP.

- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally

permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days

from date of publication]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b) (2) .)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 4, 2013

Jared Blumenfeld,
Regional Administrator,
Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 52-- [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart D - Arizona

2. Section 52.120 is amended by adding paragraphs (c)(155), (c)(156), and (c)(157) to read as follows:

§52.120 Identification of plan.

* * * * *

(c) * * *

(155) The following plan was submitted on November 6, 2009 by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Department of Environmental Quality.

(1) Affidavit by Efrem K. Sepulveda, Law Librarian, Arizona State Library, Archives and Public Records, certifying authenticity of reproduction of A.R.S. §49-542 (2008 edition) plus title page to pocket part of Title 49 (2008 edition), signed January 11, 2013.

(2) Arizona Revised Statutes (Thomson West, 2008 Cumulative Pocket Part): title 49 (the environment), section 49-542

("Emissions inspection program; powers and duties of director; administration; periodic inspection; minimum standards and rules; exceptions; definition").

(ii) Additional materials.

(A) Arizona Department of Environmental Quality.

(1) Final Arizona State Implementation Plan Revision, Exemption of Motorcycles from Vehicle Emissions Inspections and Maintenance Program Requirements in Area A (October 2009), adopted by the Arizona Department of Environmental Quality on November 6, 2009, excluding appendices A and C.

(156) The following plan was submitted on January 11, 2011 by the Governor's designee.

(i) [Reserved]

(ii) Additional materials.

(A) Arizona Department of Environmental Quality.

(1) Final Addendum to the Arizona State Implementation Plan Revision, Exemption of Motorcycles from Vehicle Emissions Inspections and Maintenance Program Requirements in Area A, October 2009 (December 2010), adopted by the Arizona Department of Environmental Quality on January 11, 2011.

(157) The following plan was submitted on May 25, 2012 by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Department of Environmental Quality.

(1) Affidavit by Barbara Howe, Law Reference Librarian, Arizona State Library, Archives and Public Records, certifying authenticity of reproduction of Arizona Revised Statutes §49-451 (*sic*) (corrected to §49-541) (2001 pocket part), signed May 3, 2012.

(2) Arizona Revised Statutes (West Group, 2001 Cumulative Pocket Part): title 49 (the environment), section 49-541 ("Definitions"), subsection 1 [Definition of Area A].

[FR Doc. 2013-12091 Filed 05/21/2013 at 8:45 am; Publication Date: 05/22/2013]